

## **Rule 27: Probation: Terms and Conditions .....Revised 3/2010**

Under A.R.S. § 13-901(A), if the court imposes probation, the court shall require the defendant to comply with “such terms and conditions as the law requires and the court deems appropriate.” Rule 27.1, Ariz. R. Crim. P., further provides that the sentencing court “may impose on a probationer such conditions as will promote rehabilitation.”

All terms and conditions of probation must be in writing, and the defendant must receive a written copy of all those terms and conditions. Rule 27.1 states, “All conditions and regulations shall be in writing, and a copy of them given to the probationer.” The Arizona Supreme Court has also required that all probationary provisions be given to a probationer in writing as a matter of due process. *State v. Stotts*, 144 Ariz. 72, 78, 695 P.2d 1110, 1116 (1985).

Rule 27.8(c)(2) also specifically states, “Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.” Thus, if a probationer is not given a specific condition of probation in writing, the court may not find that the probationer has violated his probation by failing to comply with that oral condition. This is true even though the probationer admits both that he was aware of that oral condition and deliberately failed to follow it. *State v. Robinson*, 177 Ariz. 543, 869 P.2d 1196 (1994). In *Robinson*, the defendant was charged with violating his probation by not attending counseling as directed by his probation officer. A general term of his probation required him to participate in and successfully complete counseling as directed by his probation officer. At the probation revocation hearing, Robinson admitted in open court that his probation officer had orally directed him to

participate in a particular counseling program, but confessed that he had voluntarily chosen not to go to the counseling as directed. The trial court found that Robinson had violated his probation. The Arizona Supreme Court reversed, stating that an oral condition of probation cannot be the basis for a finding of a probation violation. *Id.* at 544, 869 P.2d at 1197. The Court reasoned that Rule 27 “unequivocally requires written notice.” *Id.* at 545, 869 P.2d at 1199, and noted, “Rule 27.7(c)(2) was intended to reduce evidentiary disputes over what probationers are told and to protect probationers against probation officers’ arbitrary acts.” *Id.* at 544, 869 P.2d at 1198.

The same “written notice” requirement also applies in juvenile cases as a matter of due process. See *In re Richard M.*, 196 Ariz. 84, 993 P.2d 1048 (App. 1999) (even though the written terms of the juvenile defendant’s intensive probation required him to allow drug testing as directed by his probation officer, the court could not revoke the juvenile’s probation based on his failure to obey the probation officer’s oral order to appear and submit to drug testing on given days at a particular facility).

The trial court has wide discretion in determining appropriate terms and conditions of probation, so long as those conditions are reasonably related to the offense committed and the rehabilitative purpose of probation. “Of necessity, the trial court must be given substantial latitude in such matters in light of the uncertainty as to how rehabilitation is actually accomplished.” *State v. Donovan*, 116 Ariz. 209, 212, 568 P.2d 1107, 1110 (App. 1977).

“[U]nless the terms of probation are such that they violate fundamental rights or bear no reasonable relationship whatever to the purpose of probation over incarceration, the appellate courts will not interfere with the trial court’s exercise of discretion in the formulation of the terms and conditions of probation.” *State v. Turner*, 142 Ariz. 138, 144,

688 P.2d 1030, 1036 (App. 1984). Thus, where a condition impinges on but does not violate the defendant's fundamental rights, the condition may still be constitutional.

*State v. Nickerson*, 164 Ariz. 121, 123, 791 P.2d 647, 649 (App. 1990).

Some probation conditions are always mandatory. For example, under A.R.S. § 13-901(A), the court must require that the defendant waive extradition for any probation violation proceeding. The court must also assess any adult probationer a probation service fee of at least \$65.00 per month, unless the court determines that a lesser fee is appropriate because of the probationer's inability to pay the standard fee. If a victim has suffered economic loss from the defendant's crime, the court must order the defendant to pay restitution as a condition of probation.

The conditions of probation under A.R.S. § 13-901 may also include a requirement that the defendant participate in community punishment programs under A.R.S. § 12-299 *et seq.* The court may also require the defendant to pay a fine as a condition of probation.

Under A.R.S. § 13-901<sup>1</sup>, the court may also impose jail time as a condition of probation. The court may order the defendant to serve one or more periods in jail "at whatever time or intervals, consecutive or nonconsecutive, the court shall determine within the period of probation." § 13-901(F). Jail time imposed as a condition of probation must not exceed the maximum period of imprisonment permitted for the offense under A.R.S. § 13-701 *et seq.*, or one year, whichever is shorter.

---

<sup>1</sup> Note, however, that jail time is **not** available for defendants convicted of first-time drug possession. See A.R.S. § 13-901.01(A); *Calik v. Kongable* 195 Ariz. 496, 501, 990 P.2d 1055, 1060 (1999).

In addition, the trial court has discretion to modify or add to the conditions of a defendant's probation at any time during the probationary term, whether or not the court revokes the defendant's probation. In *State v. Contreras*, 180 Ariz. 450, 885 P.2d 138 (App. 1994), the defendant pleaded guilty to trespass and the trial court placed him on probation for two years. The plea agreement stipulated that the defendant would pay restitution to the victim up to \$1000. On the probation officer's petition, the trial court later modified the terms of the defendant's probation to require the defendant to pay restitution. On appeal, the defendant objected, arguing that the victim had waived any right to restitution by failing to make a timely request and that the court lacked jurisdiction to modify his terms of probation. The Court of Appeals found no error, stating:

When the trial court suspends sentence and orders probation, the sentence is not final. The court retains jurisdiction over the probationary terms and the probationer until the term of probation is successfully completed or until it is revoked and a prison sentence ordered. As the defendant knew, A.R.S. section 13-901(C) provides that the trial court may, in its discretion, modify or add to the conditions of probation at any time prior to the expiration or termination of the period of probation, whether or not probation is revoked.

*Contreras*, 180 Ariz. at 453, 885 P.2d at 141 [citations and internal quotations omitted].